

REMARKS

Prosecution

Applicants respectfully request reconsideration of the outstanding rejections in view of Applicants' instant claim amendments and the following Remarks.

Summary of Telephonic Interviews

Applicants previously provided a summary of the telephonic interview conducted on November 11, 2005, between Mr. Stanislaus Aksman, Mr. Robert C. Lampe III, and Examiner Chih-Min Kam, Ph.D. This Summary of Telephonic Interview was provided in Applicants' RCE submission dated January 11, 2006.

Claim Amendments

Claims 13-17, 34-44, 48-52, 56, and 58-61 will be pending on entry of the instant amendments in this application. Claims 1-12, 18-33, 45-47, 53-55, and 57 are cancelled without prejudice or disclaimer as to the subject matter contained therein. Applicants respectfully reserve the right to prosecute the subject matter of the cancelled claims in one or more continuation or divisional applications. Claims 13-15 are amended herein. Support for the claim amendments can be found throughout the specification as originally filed, for example, on page 11, lines 12-18, page 14, lines 4-10. Accordingly, Applicants submit that no new matter is introduced by way of this amendment.

35 U.S.C. § 112, first paragraph (enablement)

Claims 8-9 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Applicants respectfully disagree and traverse this rejection.

Claims 8-9 have been cancelled rendering this rejection *moot*.

Reconsideration and withdrawal of the objection is respectfully requested.

Claim 9 was rejected under 35 U.S.C. § 112, first paragraph, because the specification, while being enabling for *lactic acid bacterial cells modified to consume at least 50% of dissolved oxygen with treatment under aerobic conditions* allegedly does not reasonably provide

enablement for *lactic acid bacterial cells modified when fermented under anaerobic conditions*. Applicants respectfully disagree and traverse this rejection.

Claim 9 has been cancelled rendering this rejection *moot*.

Reconsideration and withdrawal of the objection is respectfully requested.

Claims 45-47 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Applicants respectfully disagree and traverse this rejection.

Claims 45-47 are cancelled rendering this rejection *moot*.

Reconsideration and withdrawal of the objection is respectfully requested.

35 U.S.C. § 112, second paragraph

Claims 40-42 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants respectfully disagree and traverse this rejection.

Claim 13 has been amended rendering this rejection of dependent claims 40-42 *moot*.

Reconsideration and withdrawal of the rejection is respectfully requested.

35 U.S.C. § 103(a)

Claims 4-7, 10-17, 35-39, 43, 44, and 58-61 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 5,075,226 Kaneko *et al.* (December 24, 1991) (“Kaneko *et al.*”) Applicants respectfully disagree and traverse this rejection.

Applicants note that claims 4-7 and 10-12, have been cancelled rendering rejection of these claims *moot*.

A proper obviousness rejection of patent application claims under 35 U.S.C. § 103(a) requires a showing by the USPTO that the invention defined in the rejected claim(s) as a whole is obvious in view of one reference or a combination of the references. M.P.E.P. § 2142. Three basic criteria must be met to support a *prima facie* case of obviousness: (a) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine the reference(s) teachings; (b) there must be a reasonable expectation of success; and (c) the prior art reference (or references when combined) must teach or suggest all the claim features. M.P.E.P.

§ 2143. Here, the cited reference does not suggest to a person of ordinary skill in the art the invention of claim 13.

The pending claims are drawn to an isolated starter culture comprising at least one modified lactic acid bacterial cell wherein said starter culture is in the form of a frozen or freeze-dried culture and said starter culture comprises an amount of viable lactic acid bacterial cells which is in the range of 10^{10} to 10^{12} CFU per gram. Applicants respectfully submit that there is no teaching in Kaneko *et al.*, nor a suggestion to modify the teachings of Kaneko *et al.*, to obtain the claimed isolated starter culture of claim 13.

Applicants respectfully submit that the bacterial cultures as described by Kaneko *et al.* are used to produce diacetyl and acetoin, but there is no discussion or contemplation of a starter culture in the form of a frozen or freeze-dried culture or a starter culture that comprises an amount of viable lactic acid bacterial cells which is in the range of 10^{10} to 10^{12} CFU per gram. See Kaneko *et al.* at Examples 1-5. Further, Kaneko *et al.* is silent on isolating any starter cultures, especially those in frozen or freeze-dried form. Nor does Kaneko *et al.* teach a starter culture that comprises an amount of viable lactic acid bacterial cells which is in the range of 10^{10} to 10^{12} CFU per gram. Therefore Kaneko *et al.* does not teach the method of claim 13. Further, Applicants submit that the claims dependent from claim 13 are not obvious for the same reasons discussed above.

Reconsideration and withdrawal of this rejection is respectfully requested.

Objection to the Claims

On page 7 of the Office Action, claims 34, 48-52, and 58-61 were objected to because they were dependent from a rejected claim. However, Applicants note that the claims listed in the objection on page 7 of the Office Action do not match with the listing of objected claims on the PTOL-326 form and under the heading "Conclusion". Applicants respectfully request clarification of the claims that are objected to by the Examiner. Claim 13 has been amended rendering this objection *moot*.

Reconsideration and withdrawal of the objection is respectfully requested.

CONCLUSION

An indication of allowance of all claims is respectfully solicited. Early notification of a favorable consideration is respectfully requested. In the event any issues remain, Applicants would appreciate the courtesy of a telephone call to their counsel to resolve such issues and place all claims in condition for allowance.

It is believed that all necessary fees are enclosed. However, if any additional fees are determined to be required to enter this response or maintain this application as pending, the Commissioner is hereby authorized to charge these fees to the undersigned's **Deposit Account No. 50-0206**.

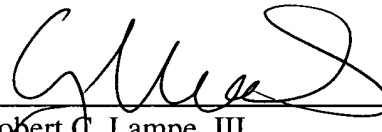
Respectfully submitted,

HUNTON & WILLIAMS LLP

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1/29/07

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